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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/527,028	03/16/2000	Sylvie Veriac	0198/053	1839
30678	7590	06/15/2005	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ LLP SUITE 800 1990 M STREET NW WASHINGTON, DC 20036-3425			GABEL, GAILENE	
			ART UNIT	PAPER NUMBER
			1641	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/527,028

Applicant(s)

VERIAC ET AL.

Examiner

Gailene R. Gabel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Appeal Brief filed October 6, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12 and 14-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 14-17 and 20-23 is/are rejected.
- 7) ☒ Claim(s) 18, 19 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Reopen Prosecution***

1. In view of the Appeal Brief filed on October 6, 2004, PROSECUTION IS HEREBY REOPENED. A Non-Final Office Action is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Amendment Entry***

2. Applicant's amendment and response filed October 6, 2004 is acknowledged and has been entered. Claim 1 has been cancelled. Claims 12 and 14-24 have been amended. Accordingly, claims 12 and 14-24 are pending and remain under examination.

### ***Rejections Withdrawn***

3. All rejections not reiterated herein have been withdrawn.

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4. All rejections of claim 1 are now moot in light of Applicant's cancellation of the claim.
5. In light of Applicant's amendment, the rejection of claims 12 and 14-24 under 35 U.S.C. 112, first paragraph, is hereby, withdrawn.
6. The rejection of claims 12 and 14-24 under 35 U.S.C. 103(a) as being unpatentable over Sakata et al. (US 5,538,893) in view of Hamaguchi et al. (US 5,389,549) is withdrawn.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 12, 14-17, and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Sakata et al. (US 5,538,893).

Sakata et al. disclose a single reagent for simultaneous determination and classification of total leucocytes including basophils (see Abstract and column 6, lines 60-64). Specifically, the single reagent comprises a buffer for preferably adjusting the pH to 2.0 - 5.0. The reagent buffer includes citric acid, malic acid, diglycolic acid, succinic acid, formic acid, or tartaric acid, their salts, and an alkali metal hydroxide such as sodium hydroxide and potassium hydroxide (see column 5, lines 25-40). The single reagent further comprises at least one cationic detergent, such as quaternary

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ammonium salts for complete lysis of erythrocytes and baring the nuclei of granulocytes other than basophil. The cationic detergents include decyl trimethyl ammonium bromide (DTAB), myristyl trimethyl ammonium bromide (MTAB), decyl trimethyl ethyl ammonium bromide (CDMEB), and other surfactants listed in Table 1 which are preferred at a concentration of 1 g/l to 10 g/l (see column 4, lines 21-59 and Table 1). The reagent further comprises inorganic salts including alkali metal salts such as sodium chloride and potassium chloride (see column 6, lines 1-6). According to Sakata et al., the surfactants, the buffer, and the salts are prepared and mixed at desired ratios (see column 5, lines 44-63). Sakata et al. also teach that the reagent comprises nitrogenous compounds such as DTAB, MTAB, CDMEB listed in Table 1 present at a concentration of 0.1 g/l to 10 g/l.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 12, 14-17, and 20-23 have been considered but are moot in view of the new ground of rejection.

### ***Allowable Subject Matter***

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9. Claims 18, 19, and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gailene R. Gabel whose telephone number is (571) 272-0820. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30 AM to 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gailene R. Gabel  
Patent Examiner  
Art Unit 1641  
June 9, 2005



LONG V. LE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

06/13/05

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